



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107<sup>th</sup> CONGRESS, FIRST SESSION

## SENATE—Tuesday, December 11, 2001

The Senate met at 9:30 a.m. and was called to order by the Honorable JEAN CARNAHAN, a Senator from the State of Missouri.

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Faithful Father, we place our trust in You. We say with the psalmist, "In You, O Lord, I put my trust."—Psalm 71:1. Things don't work out, You work out things. We entrust into Your care the worries and cares we may have brought to work with us today. We commit our loved ones and friends into Your protection. We pray for continued victory in the war against terrorism and pray for the safety of our men and women in the armed services. Here in the Senate family, we pray that our trust in You will make us trustworthy. Give us greater trust in one another. Free us of defensiveness and suspicion of those who may not share our party loyalties or particular persuasions. Bind us together in the oneness of a shared commitment to You, a passionate patriotism, and a loyal dedication to find Your solutions for the concerns that confront and often divide us. Bless the women and men of this Senate as they renew their ultimate trust in You and are faithful to the trust placed in them by the American people. You are our Lord and Saviour. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JEAN CARNAHAN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 11, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEAN CARNAHAN, a Senator from the State of Missouri, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mrs. CARNAHAN thereupon assumed the chair as the Acting President pro tempore.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

### SCHEDULE

Mr. REID. Madam President, this morning the Senate will conduct three successive rollcall votes. Following that, the Senate will resume consideration of the farm bill. As has been the case for many months, the Senate will recess from 12:30 to 2:15 for the weekly party conferences.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### EXECUTIVE SESSION

#### NOMINATION OF JOHN D. BATES, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session and proceed to Executive Calendar Nos. 586, 587, and 591.

The clerk will report Calendar No. 586.

The bill clerk read the nomination of John D. Bates, of Maryland, to be a U.S. District Judge for the District of Columbia.

Mr. HATCH. Madam President, I rise to express my enthusiastic support for the three judicial nominees the Senate is about to consider. All three are extremely well-qualified nominees who have distinguished themselves with hard work and great intellect. I think they will do great service for the citizens of our country.

One of the nominees we are considering today is John Bates. Mr. Bates has compiled an impressive resume during his 25-year legal career, having masterfully handled complex litigation in both the public and private sectors. He began his career with a federal district court clerkship, then joined the highly regarded Washington, D.C. firm of Steptoe & Johnson as an associate. In 1980, he left private practice to become an Assistant United States Attorney here in D.C. He developed a specialization in handling complex civil cases, eventually rising to become chief of the office's civil division.

After 15 years at the U.S. Attorney's Office and a detail to the Office of the Independent Counsel investigating Whitewater, Mr. Bates returned to the private sector in 1998, joining the D.C. firm of Miller & Chevalier as a member. Despite the demands of his legal practice, he has demonstrated a true commitment to his community through his service on the Board of Directors of the Washington Lawyers' Committee on Civil Rights and Urban Affairs. The breadth and depth of Mr. Bates's legal career will serve him well as a federal district court judge here in the District of Columbia.

Another one of our district court nominees is Kurt Engelhardt, who has been nominated to be a federal district judge in the Eastern District of Louisiana. During his 15-year legal career, Mr. Engelhardt has handled a wide array of civil litigation cases, including commercial litigation, bankruptcy, and casualty and professional malpractice defense work.

In 1995, the Conference of the Louisiana Court of Appeal Judges nominated Mr. Engelhardt to serve on the Judiciary Commission of Louisiana,

which is the body of the Louisiana Supreme Court responsible for hearing allegations of ethical violations by state judges and making disciplinary recommendations. This appointment reflects the high esteem in which Louisiana's judges hold Mr. Engelhardt. I am confident that his demonstrated exercise of sound judgment will bring honor and fairness to the federal bench.

Julie A. Robinson has been nominated for the federal bench in the District of Kansas. She graduated from the University of Kansas School of Law and then went to work as a law clerk to the Chief Bankruptcy Judge for the District of Kansas. She must have liked that clerkship for the last six years, she has been sitting as a Bankruptcy Judge on that very same court, and also currently serves as a Judge on the Tenth Circuit Bankruptcy Appellate Panel. In between, Judge Robinson gained a wealth of both criminal and civil experience as an Assistant U.S. Attorney in the District of Kansas. Judge Robinson is a Fellow of the American Bar Foundation and sits on many committees as a member of the National Conference of Bankruptcy Judges, the Kansas Bar Association, and as a past president of the Board of Governors for the University of Kansas School of Law. She is currently a Master of the Sam Crow Inn of Court. Judge Robinson's obvious skills, work ethic, and devotion to her profession make it clear that the people of Kansas will be well served with her on the District Court bench.

It is a pleasure to speak on behalf of these nominees prior to their votes. I encourage my colleagues to vote for their confirmation.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination of John D. Bates, of Maryland, to be a U.S. District Judge for the District of Columbia? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Ohio (Mr. VOINOVICH), the Senator from Nebraska (Mr. HAGEL), and the Senator from Oklahoma (Mr. INHOFE) are necessarily absent.

I further announce that if present and voting the Senator from Oklahoma (Mr. INHOFE) would vote "yea."

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 361 Ex.]

YEAS—97

|         |           |          |
|---------|-----------|----------|
| Akaka   | Bingaman  | Byrd     |
| Allard  | Bond      | Campbell |
| Allen   | Boxer     | Cantwell |
| Baucus  | Breaux    | Carmahan |
| Bayh    | Brownback | Carper   |
| Bennett | Bunning   | Chafee   |
| Biden   | Burns     | Cleland  |

|            |             |             |
|------------|-------------|-------------|
| Clinton    | Hatch       | Nelson (NE) |
| Cochran    | Helms       | Nickles     |
| Collins    | Hollings    | Reed        |
| Conrad     | Hutchinson  | Reid        |
| Corzine    | Hutchison   | Roberts     |
| Craig      | Inouye      | Rockefeller |
| Crapo      | Jeffords    | Santorum    |
| Daschle    | Johnson     | Sarbanes    |
| Dayton     | Kennedy     | Schumer     |
| DeWine     | Kerry       | Sessions    |
| Dodd       | Kohl        | Shelby      |
| Domenici   | Kyl         | Smith (NH)  |
| Dorgan     | Landrieu    | Smith (OR)  |
| Durbin     | Leahy       | Snowe       |
| Edwards    | Levin       | Specter     |
| Ensign     | Lieberman   | Stabenow    |
| Enzi       | Lincoln     | Stevens     |
| Feingold   | Lott        | Thomas      |
| Feinstein  | Lugar       | Thompson    |
| Fitzgerald | McCain      | Thurmond    |
| Frist      | McConnell   | Torricelli  |
| Graham     | Mikulski    | Warner      |
| Gramm      | Miller      | Wellstone   |
| Grassley   | Murkowski   | Wyden       |
| Gregg      | Murray      |             |
| Harkin     | Nelson (FL) |             |

NOT VOTING—3

Hagel Inhofe Voinovich

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, I am about to make a unanimous consent request on these judges. I want people to know the three judicial nominations before us today fill vacancies in the District of Columbia, the eastern district of Louisiana, and Kansas. When we act favorably on these nominations, we will have confirmed 24 Federal judges since July, including 6 to the courts of appeals.

I mention that because when I became chairman of the Judiciary Committee in July, Federal court vacancies were rising to 111. Since July, we have worked very hard. The Senate has been cooperative. We have confirmed two dozen judges. We are lowering the number of vacancies. In fact, since I became chairman, we have had 19 additional vacancies arise. But we have not only outpaced this high level of attrition, we have lowered the vacancies to under 100. Of course, we would not have had nearly as many vacancies had the Senate confirmed the judges nominated by President Clinton.

We have made progress and outpaced attrition. We have filled vacancies. We are moving forward. I thank Senators on both sides of the aisle who have helped so much on this, who have worked with us even when we had to move out of the Senate office buildings because of anthrax attacks and the September 11 attacks. We have kept going. Contrary to what one person said on TV, inaccurately, and I assume by mistake, this weekend about not keeping up with attrition, we not only have kept up with attrition, we have outpaced attrition.

We will try to keep that number moving in the right direction. In spite of the upheavals we have experienced this year with the shifts in chairmanship, the delay in reorganizing the Senate and assigning Members to the committees, the vacancies that have arisen

since this summer, the need to focus our attention on responsible action in the fight against international terrorism and the threats and dislocations of the anthrax attacks, we are making progress.

Far from taking a "time out," as Republicans were suggesting, this Committee has been in overdrive since July and we redoubled our efforts after September 11, 2001.

During the last 6½ years when a Republican majority controlled the process, the vacancies rose from 65 to at least 103, an increase of almost 60 percent.

Since July, we have been making strides to reverse that record and have worked hard to reduce vacancies below the 111 vacancies that existed in July.

In addition to the three nominations being considered by the Senate today, another three nominations to vacancies on the District Courts in New Mexico, Arizona and Georgia are on the Senate Executive Calendar, and another five nominations were included in a hearing last Wednesday.

If the Committee is able to report those nominations and the Senate acts favorably on them before recessing for the year, we will have confirmed 32 judges since July and 28 since the August recess. This is more judges than were confirmed after the August recess in any of the last 6½ years. It would be more judges than were confirmed in the first year of the Clinton administration and include twice as many judges to the Courts of Appeals as were confirmed that year.

It would be more than twice as many judges as were confirmed in the first year of the first Bush administration, including more judges to the Courts of Appeals.

The President has yet to send nominations to fill more than half of the current vacancies. This is a particular problem with the 71 District Court vacancies, for which 50—more than 70 percent—do not have nominations pending.

We have been able to reduce vacancies over the last 6 months through hard work and a rapid pace of scheduling hearings. Until I became Chairman of the Judiciary Committee, no judicial nominees had been given hearings this year. No judicial nominees had been considered by the Judiciary Committee or been voted upon by the Senate.

After almost a month's delay in the reorganization of the Senate in June while Republicans sought leverage to change the way judicial nominations had traditionally been considered and abruptly abandoned the practices that they had employed for the last 6½ years, I noticed our first hearing on judicial nominees within 10 minutes of the reorganization resolution being adopted by the Senate.

I have previously noted that during the 6½ years that the Republican majority most recently controlled the



confirmation process, in 34 of those months they held no confirmations for any judicial nominees at all, and in 30 other months they conducted only a single confirmation hearing involving judicial nominees.

Since the Committee was assigned its members in early July, 2001, we have held confirmation hearings every month, including two in July, two during the August recess, two during December and three hearings during October. Only once during the previous 6½ years has the Committee held as many as three hearings in a single month.

On the other hand, on at least three occasions during the past 6½ years the Committee had gone more than five months without holding a single hearing on a pending judicial nominee. We have held more hearings involving judicial nominees since July 11, 2001 than our Republican predecessors held in all of 1996, 1997, 1999 or 2000. In the last six months of this extraordinarily challenging year, the Committee has held 11 hearings involving judicial nominees.

Last week the Committee held its tenth hearing on judicial nominations and yesterday I chaired our eleventh since the Committee was assigned its membership on July 10, 2001. During the three months since September 11, the Judiciary Committee has held seven judicial confirmation hearings—the same number that the Republican majority held in all of 1999 and one more than they held in all of 1996. Since July we have held hearings on 34 judicial nominees, including seven to the Courts of Appeals.

Since September 11 we have held hearings on 27 judicial nominees, including four to the Courts of Appeals.

Working with the Majority Leader and the Deputy Leader, I have adopted a practice for the second half of this year of working with all Senators and with the Administration to try to fill as many judicial vacancies as possible. To date we have succeeded in confirming 24 judges.

We have persevered through extraordinary circumstances during which the Senate building housing the Judiciary Committee hearing room was closed, as were the buildings housing the offices of all the Senators on the Committee. We persevered through a partisan filibuster preventing action on the bill that funds our nation's foreign policy initiatives and provides funds to help build the international coalition against terrorism.

We showed patience and resolve when at our November hearing a family member of one of the nominees grew faint and required medical attention. That hearing was completed after attending to those medical needs.

We have accomplished more, and at a faster pace, than in years past. Even with the time needed by the FBI to follow up on the allegations that arose re-

garding Judge Wooten in connection with his confirmation hearing, we have proceeded much more quickly than at any time during the last 6½ years. Thus, while the average time from nomination to confirmation grew to well over 200 days for the last several years, we have considered nominees much more promptly.

Measured from receipt of their ABA peer reviews, we have confirmed the judges this year, including the Court of Appeals nominees, on average in less than 60 days. So, we are working harder and faster than previously on judicial nominations, despite the difficulties being faced by the nation and the Senate.

We have also completed work on a number of judicial nominations in a more open manner than ever before.

For the first time, this Committee is making public the "blue slips" sent to home State Senators. Until my chairmanship, these matters were treated as confidential materials and restricted from public view. We have moved nominees with less time from hearings to the Committee's business meeting agenda, and then out to the floor, where nominees have received timely roll call votes and confirmations.

The past practices of extended unexplained anonymous holds on nominees after a hearing have not been evident in the last six months of this year as they were in the past. Indeed over the past 6½ years at least eight judicial nominees who completed a confirmation hearing were never considered by the Committee but left without action.

Likewise, the extended, unexplained, anonymous holds on the Senate Executive Calendar that characterized so much of the last 6½ years have not slowed the confirmation process this year. Majority Leader DASCHLE has moved swiftly on judicial nominees reported to the calendar.

Once those judicial nominees have been afforded a timely rollcall vote, the record shows that the only vote against any of President Bush's nominees to the federal courts to date was cast by the Republican Leader.

With respect to law enforcement, I have noted that the administration was quite slow in making United States Attorney nominations, although it had called for the resignations of United States Attorneys early in the year.

Since we began receiving nominations just before the August recess, we have been able to report, and the Senate has confirmed, 57 of these nominations. We have only a few more United States Attorney nominations received in November and December, and await approximately 30 nominations from the Administration. These are the President's nominees based on the standards that he and the Attorney General have devised.

I note, again, that it is most unfortunate that we still have not received

even a single nomination for any of the United States Marshal positions. United States Marshals are often the top federal law enforcement officer in their district. They are an important front-line component in homeland security efforts across the country. We are near the end of the legislative year without a single nomination for these 94 critical law enforcement positions.

It will likely be impossible to confirm any United States Marshals this year having not received any nominations in the first 11 and one-half months of the year.

In the wake of the terrorist attacks on September 11, some of us have been seeking to join together in a bipartisan effort in the best interests of the country.

For those on the Committee who have helped in those efforts and assisted in the hard work to review and consider the scores of nominations we have reported this year, I thank them. As the facts establish and as our actions today and all year demonstrate, we are moving ahead to fill judicial vacancies with nominees who have strong bipartisan support. These include a number of very conservative nominees.

The nominations before the Senate today are John Bates for the District of Columbia, Julie Robinson for the District Court in Kansas, and Kurt Engelhardt for the District Court in the Eastern District of Louisiana.

Before I became Chairman, the last confirmation to the District Court for the District of Columbia was that of Judge Ellen Huvelle. Despite being a distinguished judge in the D.C. Superior Court for nearly a decade, her nomination was pending for almost seven months before she received a hearing. Judge Colleen Kollar-Kotelly had similar credentials and suffered even worse delays. Judge Kollar-Kotelly also served as a distinguished local judge. Her confirmation, nonetheless, required two nominations over two years before she was finally confirmed in 1997. She was not confirmed for eight months after her confirmation hearing. Of course, she has now replaced Judge Jackson as the judge in charge of proceedings on the government suit and proposed settlement of that legal action against Microsoft.

Despite nominees for vacancies on the District Court for the District of Columbia over the past several years, no nomination to this District Court had received a hearing in over two years. Things changed this July. First, we moved expeditiously to consider the nomination of Judge Reggie Walton to one of those longstanding vacancies. I chaired an unprecedented August recess hearing for Judge Walton and he was confirmed in September. Now we are proceeding, with the support of Representative Norton, to fill a second longstanding vacancy on the District Court for the District of Columbia.

John Bates will be the second confirmation to the United States District Court for the District of Columbia in the last three months, after years of inaction.

The vacancy that is being filled by Judge Robinson is one that existed before I became chairman. Indeed, last year the President had nominated Keith Gary Sebelius in anticipation of that vacancy.

In the last 6 months of last year Mr. Sebelius was not included in a hearing and his nomination died without Committee action and without Senate action when it was returned to the White House last December. Last year the Republican majority held only two hearings involving only seven District Court nominees in July and no hearings for any other judicial nominees in August, September, October, November or December, in spite of the vacancies and pending judicial nominations to fill them. This year, during the same time frame, the Committee has held 11 hearings involving 34 judicial nominations of which 27 have already been reported favorably to the Senate.

With respect to the vacancy in Kansas, Senators ROBERTS and BROWBACK wrote to me in October enclosing a letter from the Chief Judge of that District indicating that the vacancy combined with medical leave for a senior Judge had created a serious problem in that District. Chief Judge Lungstrum noted in his letter to Senator ROBERTS that the District in Kansas was without an active judge in its Topeka division. Just as we responded quickly to the Chief Judge of the District Court in Montana and the Chief Judge of the District Court in the Eastern District of Kentucky, we have responded to Chief Judge Lungstrum. Judge Robinson was included in a hearing on November 7 and reported by the Committee last month.

With respect to the vacancy on the Eastern District of Louisiana, that vacancy predated my chairmanship, as well. I recall the nomination in 1997 of Judge Lemelle to a vacancy on that court, the hearing held on his nominations more than 11 months later and his confirmation later still that year. I am glad to work with Senators BREAUX and LANDRIEU to help fill another vacancy on that important court and to be able to do so within one-third the time it took to confirm the last judge to this District.

I am proud of the work the Committee has done on nominations, and I am proud that by the end of today we will have confirmed 24 judges. I hope that by the end of this session that total will rise to about 30 as the Committee continues its work on the nominations heard last week and the Senate confirms the additional three nominees previously reported by the Committee.

Mr. HATCH. Madam President, I wish to respond to remarks by my good

friend and colleague, the distinguished Senator from Vermont, about the pace of moving judicial nominees. Now, at the outset, I should say I am pleased that we are moving the few judges we have moved to date. However, despite the confirmation of three Federal judges today, the number of vacancies in the Federal judiciary remains at nearly 100—not far from where it has hovered ever since the Democrats assumed control of the Judiciary Committee. This is no victory—the vacancy rate still stands at a staggering 11.3 percent.

In 1997, Senator LEAHY remarked:

For the past several months I have spoken about the crisis being created by the almost 100 vacancies that are being perpetuated on the Federal courts around the country and the failure of the Senate to carry out its constitutional responsibilities to advise and consent to judicial confirmations. . . . Confirming Federal judges should not be a partisan issue. The administration of justice is not a political issue. Working together, the Senate should do our constitutionally mandated job and proceed to confirm the judges we need for the Federal system.

I couldn't agree more with these sentiments. One hundred vacancies in the Federal judiciary is nothing to brag about, especially when there are 40 nominees waiting to fill these gaps. Some of these nominees have been waiting for hearings as long as seven months, and it is evident that most, if not all, of them will not get a hearing and vote this year.

Maybe some of my colleagues forget that earlier in the year when we attempted to move the first of President Bush's judicial nominees, some on the other side of the aisle objected that we were moving too fast either they wanted the ABA to do an evaluation before they would allow us to move or it was a fight over the now infamous blue-slip process. I say this in response to claims that somehow it is the Republicans' fault for not confirming judges earlier this year.

I am not the only one who has noticed that the Committee is making slow work of its job this year. In a November 30 editorial, the Washington Post declared that the Committee should hold more judicial confirmation hearings, concluding that "[f]ailing to hold them in a timely fashion damages the judiciary, disrespects the president's power to name judges and is grossly unfair to often well-qualified nominees."

As chairman of the Judiciary Committee during 6 years of the Clinton Administration, I responded to the vacancies in the Federal judiciary by holding hearings and votes on judges. As a result, 377 Clinton appointees are sitting on the Federal bench today. So, in contrast to the claims I have heard today, the present vacancy rate is not the result of any failure to confirm Clinton nominees. Instead, it is a direct result of the failure to confirm Bush nominees.

What is important to note is that at the end of the 106th Congress, there were only 67 vacancies in the federal judiciary for which there was a total of 41 nominees—some of whom were not nominated until very late in the year. Today, of course, there are nearly 100 vacancies, but the Senate has confirmed only 24 judges. So I believe it's fair to say that the pace of confirmations has not kept up with attrition.

I am pleased that we are taking these steps with the confirmation of three federal district judges. There are three more judicial nominees awaiting floor votes, and seven more judicial nominees awaiting a Committee vote, including one circuit judge. I urge my Democratic colleagues to act to confirm at least these nominees before the end of the session, and work with us to move the roadblocks they have erected in the confirmation process of all the other nominees, particularly those circuit court nominees who have been pending since May.

I yield the floor.

Mr. LEAHY. Madam President, if nobody has any objection, I ask unanimous consent that we vacate the yeas and nays on the next two nominations and that the Chair put the question of each one of them separately to the body on a voice vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BYRD. Madam President, what was the request?

Mr. LEAHY. If I could respond to the distinguished Senator from West Virginia, my request is that we vacate the yeas and nays on the next two nominations and that we bring them up separately now and that the body be allowed to vote on them by voice vote.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### NOMINATION OF KURT D. ENGELHARDT, OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

The ACTING PRESIDENT pro tempore. The Senate will proceed to the nomination of Kurt D. Engelhardt, of Louisiana, which the clerk will report.

The bill clerk read the nomination of Kurt D. Engelhardt, of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

Mr. LEAHY. Madam President, I understand both of the Senators from Louisiana have returned blue slips in support of this nominee and I support the nominee.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination of Kurt D. Engelhardt, of Louisiana, to be United States District Judge for the Eastern District of Louisiana?

The nomination was confirmed.